

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PHILIP ALLEN LOMATH
333 Sequoia Avenue
Morro Bay, CA 93442

Registered Nurse License No. 570620

Respondent

Case No. 2008-51

DEFAULT DECISION AND ORDER

The attached Default Decision and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on **March 7, 2008**.

IT IS SO ORDERED **February 6, 2008**



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-51

13 **PHILIP ALLEN LOMATH**
14 333 Sequoia Avenue
15 Morro Bay, CA 93442

**DEFAULT DECISION
AND ORDER**

Registered Nurse License No. 570620

[Gov. Code, §11520]

Respondent.

16 **FINDINGS OF FACT**

17 1. On or about August 17, 2007, Complainant Ruth Ann Terry, M.P.H., R.N.,
18 in her official capacity as the Executive Officer of the Board of Registered Nursing (Board), filed
19 Accusation No. 2008-51 against Philip Allen Lomath (Respondent) before the Board.

20 2. On or about August 22, 2000, the Board issued Registered Nurse License
21 No. 570620 to Respondent. The Registered Nurse License was in full force and effect at all
22 times relevant to the charges brought herein and will expire on August 31, 2008, unless renewed.

23 3. On or about August 23, 2007, Thurman Peden, an employee of the
24 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
25 2008-51, Statement to Respondent, 2 Notices of Defense, Request for Discovery, and
26 Government Code sections 11507.5, 11507.6, and 11507.7, to Respondent's address of record
27 with the Board, which was and is 333 Sequoia Avenue, Morro Bay, CA 93442. A copy of the
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1 Accusation, the related documents, and Declaration of Service are attached as Exhibit A, and are
2 incorporated herein by reference.

3 4. Service of the Accusation was effective as a matter of law under the
4 provisions of Government Code section 11505, subdivision (c).

5 5. On or about September 26, 2007, the aforementioned documents were
6 returned by the U.S. Postal Service marked "Unclaimed." A copy of the envelope returned by the
7 post office is attached as Exhibit B, and is incorporated herein by reference.

8 6. Government Code section 11506 states, in pertinent part:

9 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
10 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
11 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
12 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

13 7. Respondent failed to file a Notice of Defense within 15 days after service
14 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
15 Accusation No. 2008-51.

16 8. California Government Code section 11520 states, in pertinent part:

17 "(a) If the respondent either fails to file a notice of defense or to appear at the
18 hearing, the agency may take action based upon the respondent's express admissions or
19 upon other evidence and affidavits may be used as evidence without any notice to
20 respondent."

21 9. Pursuant to its authority under Government Code section 11520, the Board
22 finds Respondent is in default. The Board will take action without further hearing and, based on
23 Respondent's express admissions by way of default and the evidence before it, contained in
24 Exhibits A, B and C, finds that the allegations in Accusation No. 2008-51 are true.

25 10. The total costs for investigation and enforcement are ten thousand five
26 hundred dollars (\$10,500) as of October 22, 2007.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Philip Allen Lomath has subjected his Registered Nurse License No. 570620 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation:

a. Business and Professions Code section 2761 (f) and California Code of Regulations, title 16, section 1444 - conviction of substantially related crimes;

b. Business and Professions Code sections 2761 (a) and 2762 (c) - conviction of crime involving controlled substance/dangerous drug;

c. Business and Professions Code sections 2761 (a) and 2762 (d) - commitment for intemperate use or addiction of controlled substance/dangerous drug;

d. Business and Professions Code sections 2761 (a) and 2762 (a) - illegal possession of controlled substance/dangerous drug;

e. Business and Professions Code sections 2761 (a) and 2762 (b) - dangerous use of controlled substance/dangerous drug;

f. Business and Professions Code section 2761 (a) - unprofessional conduct;

g. Business and Professions Code sections 2761 (a) and 2762 (e) - falsifying/making grossly incorrect or inconsistent entries in hospital records.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 570620, heretofore issued to Respondent Philip Allen Lomath, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 7, 2008.

It is so ORDERED February 6, 2008



FOR THE BOARD OF REGISTERED NURSING

60249089.wpd

DOJ docket number: LA2006600949

Attachments:

Exhibit A: Accusation No.2008-51, Related Documents, and Declaration of Service
Exhibit B: Copy of Envelope Returned by Post Office
Exhibit C: Certification of Costs and Declaration of Linda L. Sun

Exhibit A

Accusation No. 2008-51,
Related Documents and Declaration of Service

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS,
Supervising Deputy Attorney General
3 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
4 California Department of Justice
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-6375
6 Facsimile: (213) 897-2804

7 Attorneys for Complainant

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2008-51

12 PHILIP ALLEN LOMATH
333 Sequoia Avenue
13 Morro Bay, CA93442

A C C U S A T I O N

14 Registered Nurse License No. 570620

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H, R.N (Complainant) brings this Accusation solely
20 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs (Board).

22 2. On or about August 22, 2000, the Board issued Registered Nurse License
23 No. 570620 to Philip Allen Lomath (Respondent). The Registered Nurse License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on August 31,
25 2008, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 states, in pertinent part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

“(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . .”

7. Section 2762 states, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish

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1 or administer to another, any controlled substance as defined in Division 10 (commencing with
2 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
3 defined in Section 4022.

4 “(b) Use any controlled substance as defined in Division 10 (commencing with
5 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
6 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
7 injurious to himself or herself, any other person, or the public or to the extent that such use
8 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
9 license.

10 “(c) Be convicted of a criminal offense involving the prescription, consumption,
11 or self-administration of any of the substances described in subdivisions (a) and (b) of this
12 section, or the possession of, or falsification of a record pertaining to, the substances described in
13 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
14 thereof.

15 “(d) Be committed or confined by a court of competent jurisdiction for
16 intemperate use of or addiction to the use of any of the substances described in subdivisions (a)
17 and (b) of this section, in which event the court order of commitment or confinement is prima
18 facie evidence of such commitment or confinement.

19 “(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
20 entries in any hospital, patient, or other record pertaining to the substances described in
21 subdivision (a) of this section.”

22 8. Section 490 states:

23 “A board may suspend or revoke a license on the ground that the licensee has
24 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
25 duties of the business or profession for which the license was issued. A conviction within the
26 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
27 contendere. Any action which a board is permitted to take following the establishment of a
28 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has

1 been affirmed on appeal, or when an order granting probation is made suspending the imposition
2 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
3 Penal Code.”

4 9. California Code of Regulations, title 16, section 1444 states, in pertinent
5 part:

6 “A conviction or act shall be considered to be substantially related to the
7 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
8 present or potential unfitness of a registered nurse to practice in a manner consistent with the
9 public health, safety, or welfare. . . .”

10 10. Section 125.3 provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations
12 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

15 11. **Methamphetamine** is a Schedule II controlled substance as designated by
16 Health and Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug
17 pursuant to Business and Professions Code section 4022.

18 12. **Neurontin**, trade name for Gabapentin, is indicated as adjunctive therapy
19 for the treatment of partial seizures with and without secondary generalization in adults with
20 epilepsy. It is a dangerous drug within the meaning of Business and Professions Code section
21 4022.

22 13. **Depakote** is indicated for the treatment of manic episodes associated with
23 bipolar disorder. It is a dangerous drug within the meaning of Business and Professions Code
24 section 4022.

25 14. **Sinemet**, trade name for Carbidopa-Levodopa, is indicated for treatment
26 of Idiopathic Parkinson’s disease. It is a dangerous drug within the meaning of Business and
27 Professions Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially Related Crimes)**

3 15. Respondent is subject to disciplinary action under Code sections 490 and
4 2761, subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444,
5 in that Respondent was convicted of criminal offenses substantially related to the qualifications,
6 functions, or duties of a registered nurse, as follows:

7 a. On or about July 29, 2005, in a criminal proceeding entitled *The People of*
8 *the State of California v Philip Allen Lomath* in San Luis Obispo Superior Court, Case No.
9 F0373264, Respondent was convicted on a plea of *nolo contendere* for violating Penal Code
10 section 273.5(a) (inflicting corporal injury on spouse), a misdemeanor, and a plea of *nolo*
11 *contendere* for violating Health and Safety Code section 11377(a) (possession of a controlled
12 substance - methamphetamine), a misdemeanor. The court ordered a 3-year probation, a 90-day
13 jail time and attendance at a 52 week batterer's program, among others.

14 b. The circumstances of the conviction are that on or about June 5, 2005,
15 Atascadero Police Department officers arrested Respondent for physically assaulting his former
16 spouse over custody matters involving their 3-year old son. Upon an inventory search of
17 Respondent's person, the officers found a baggie containing crystallized Methamphetamine.
18 Respondent admitted to using Methamphetamine prior the incident.

19 c. On or about March 1, 2006, the court found Respondent to be in violation
20 of probation and ordered Respondent to serve 4 days in jail.

21 d. On or about January 23, 2007, the court found Respondent to be in
22 violation of probation and ordered Respondent to serve 60 days in jail, and enroll into a
23 residential drug treatment program for using controlled substances and possession of alcohol,
24 among others.

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1 such use impairs his ability to conduct with safety to the public the practice authorized by his or
2 her license. The circumstances are as described in paragraph 15 above, and incorporated herein
3 by reference as if fully set forth.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct)**

6 20. Respondent is subject to disciplinary action under Code section 2761,
7 subdivision (a), on the grounds of unprofessional conduct, as follows:

8 a. From about May 30, 2006 to about July, 2006, while employed at Bayside
9 Care Center, Morro Bay as a charge nurse, Respondent did not call and did not show up for work
10 on several of his scheduled days. When his employer questioned about his absence, Respondent
11 hung up the telephone.

12 b. From about February 21, 2006, 2006 to about August 18, 2006, while
13 employed at Mission View Health Center, San Luis Obispo as a per diem registered nurse,
14 Respondent failed to pass medication to patients as required, and failed to follow hospital policy
15 to record the missed/refused doses and/or medication destruction. The circumstances are as
16 follows:

17 i. On or about August 18, 2006, at 1300 hours, Respondent did not sign for
18 Neurontin 100mg to be administered to Patient A. The medication was not administered and was
19 found in the trash.

20 ii. On or about August 18, 2006, at 1300 hours, Respondent signed for
21 Depakote to be administered to Patient B. The medication was not administered and was found
22 in the trash.

23 iii. On or about August 18, 2006, at 1130 hours, Respondent did not sign for
24 Sinemet to be administered to Patient C. The medication was not administered and was found in
25 the trash.

26 iv. On or about August 18, 2006, at 1300 hours, Respondent signed for
27 Sinemet to be administered to Patient D. The medication was not administered and was found in
28 the trash.

1 **SEVENTH CAUSE FOR DISCIPLINE**

2 **(Falsify/Make Grossly Incorrect or Inconsistent Entries)**

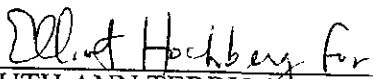
3 21. Respondent is subject to disciplinary action under Code section 2761,
4 subdivision (a) and 2762, subdivision (e), on the grounds of unprofessional conduct, for
5 falsifying, and/or making grossly incorrect or inconsistent entries in the hospital and patients'
6 records regarding medication administration. The circumstances are as described in paragraph
7 20 (b) above, and incorporated herein by reference as if fully set forth.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 11 1. Revoking or suspending Registered Nurse License No. 570620, issued to
12 Philip Allen Lomath.
- 13 2. Ordering Philip Allen Lomath to pay the Board of Registered Nursing the
14 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
15 Professions Code section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: 8/17/07

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19 
20 RUTH ANN TERRY, M.P.H., R.N.
21 Executive Officer
22 Board of Registered Nursing
23 Department of Consumer Affairs
24 State of California

25 Complainant